

C O P Y in 115

in opinion

161-54 open now

copy  
sent

June 6, 1958

NEW HAMPSHIRE LAW LIBRARY

OCT 01 1998

CONCORD, N.H.

Mr. Adelard E. Cote, Commissioner  
Labor Department  
State House  
Concord, New Hampshire

Re: Bertram E. George  
vs: Jonas Damon Estate

Dear Mr. Cote:

This will acknowledge your letter of June 5, 1958 in which you request our opinion with regard to an attempted attachment of an award of Workmen's Compensation.

You state that on August 26, 1957 one Bertram George was injured while employed by the Jonas Damon Estate, a self-insurer. The Estate paid Mr. George weekly compensation for a period of time and the parties have now come to an agreement on a lump sum settlement for Mr. George's permanent partial disability.

A hearing is to be held by you on June 10, 1958 on the approval of the parties' agreement. The Administrator of the Estate has already sent you a check, payable to your order, in the amount of the agreed lump sum settlement so that you may turn it over to Mr. George, upon approval of the agreement.

Attorney Mayland Morse has served a Writ on the State Treasurer on behalf of one of Mr. George's creditors by which he attempts to trustee the funds turned over to you for payment of the award to Mr. George.

C O P Y

Adelard E. Coto, Commissioner — 2.

June 6, 1958

You request our opinion as to whether this money can be trusted in this manner. We answer in the negative. Under RSA 281:45

" . . . the compensation and claims therefor shall be exempt from all claims of creditors . . . "

In Arsenault v. LePage, 84 N.H. 497 the Court said in part:

"The legislative intention to exempt all classes of compensation from trustee process or other forms of attachment is plainly evident from the text of the statute."

At the time of the decision in that case the statute then provided that:

"Weekly payments due under this chapter shall not be assignable or subject to levy, execution, attachment or satisfaction of debts."

The parties there had agreed on a lump sum settlement and the claim was made that since the statute read in terms of "weekly payments" in regard to exemptions from attachment, a lump sum settlement could be attached. The Court rejected this contention and clearly stated that all forms of compensation under the act were exempt from attachment.

The language of RSA 281:45 is even clearer in that regard than the language of the statute in effect when the Arsenault case was decided.

I have spoken to Attorney Morse and he is to let me know by Monday whether he will release the State as trustee.

I would advise you not to pay the money over to Mr. George until such release is obtained from Mr. Morse.

C O P Y

GENERAL

Adolard E. Cote, Commissioner -- 3.

June 6, 1958

In the event he refuses to give a release,  
you should notify me and I will enter our appearance in  
the action and file a motion to discharge the State as  
trustee in order that you may be free to pay Mr. George.

Sincerely yours,

John J. Zimmerman  
Assistant Attorney General

JJZ:w